

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
AND  
SUNGARD AVAILABILITY SERVICES LP**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and SunGard Availability Services LP, hereinafter referred to as the "Contractor," is for the provision of Infrastructure Disaster Recovery Services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a Limited Partnership.

Contractor Place of Incorporation or Organization: Pennsylvania

Contractor Edison Registration ID # 0000013371

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract and its incorporated documents (Contract Section E.8).
- a. Definitions.
- i. Recovery Center (a.k.a. Hotsite) – a commercial disaster recovery facility that provides the space and equipment required to provide Infrastructure Disaster Recovery Services, such that the State can conduct disaster recovery testing for the contracted Environment(s) or continue Information Technology (IT) operations for the contracted Environment(s) in the event of an Infrastructure Disaster.
  - ii. Cold Site (a.k.a. Coldsite) – a commercial disaster recovery facility that provides adequately powered and cooled space for the State to install and operate the equipment needed to continue IT operations for the contracted Environment(s) in the event of a disaster.
  - iii. Infrastructure Disaster – a disaster affecting the State's IT processing capabilities.
  - iv. Print Services Disaster – a disaster affecting the State's printing capabilities.
  - v. Disaster Recovery Environment (a.k.a. Environment) – a particular State computing environment, which comprises common equipment (e.g. Mainframe Environment) or exists to serve a State program area (e.g. TennCare Environment).
  - vi. Infrastructure Disaster Recovery Services – all services described in Contract Section A, Scope of Services.
- A.2. The State will reconfigure Disaster Recovery Environments in accordance with Contract Section E.12. The State will remove Disaster Recovery Environments in accordance with Contract Section E.13. The State will compensate the Contractor for Infrastructure Disaster Recovery Services on a monthly basis in accordance with Contract Section C.3.b and the rates listed for the specific items that make up each configuration, as detailed in Contract Attachment B.
- A.3. The Contractor shall provide recovery services for two types of Disaster declarations - Infrastructure Disaster declaration and Print Services Disaster declaration. Depending upon the circumstances, these declarations may be declared at different times or at the same time. Print Services Disaster Recovery Services will be provided under a separate contract and is not addressed in this Contract. This dual-contract approach notwithstanding, the Contractor shall insure adequate coordination between the services of the two contracts, such that Infrastructure Disaster Recovery Services and Print Services Disaster Recovery Services are performed in a seamless and efficient manner. The State's Office for Information Resources will declare an Infrastructure Disaster declaration by Environment(s) when service delivery capabilities for the

Environment(s) are interrupted. The Contractor will provide the State with access to a Recovery Center within 24 hours of an Infrastructure Disaster Declaration.

- A.4. The Contractor will provide and maintain a minimum of two (2) Recovery Centers from which the Infrastructure Disaster Recovery Services may be provided. The Recovery Centers must be at least one hundred (100) miles from Nashville, Tennessee and more than fifty (50) miles from each other.
- A.5. During any given Contract year, the Contractor will provide up to eighty (80) total hours Infrastructure Disaster Recovery Services testing in a maximum of two (2) tests, for each State-configured Disaster Recovery Environment. Such testing shall occur on a continuous, round-the-clock basis. The State will schedule Infrastructure Disaster Recovery Services testing for a Disaster Recovery Environment a minimum of sixty (60) days prior to the testing and at a time that is mutually agreeable to the Contractor and the State. Such Infrastructure Disaster Recovery Services testing will be included in the Monthly Services fees for the Disaster Recovery Environment. The State will compensate the Contractor for additional testing hours during a contract year per Disaster Recovery Environment, in eight (8) hour blocks, in accordance with Contract Section C.3.b.
- A.6. The State recognizes that equivalent equipment may be substituted at the Recovery Center to meet the State's Disaster Recovery Environment requirements. ("Equivalent equipment or technology" is defined as "compatible equipment or technology capable of supporting the State's applications without modification.") Such substitutions will require approval of the State. If usage of equivalent equipment results in extended set up and configuration time during Infrastructure Disaster Recovery Services testing, such that the remaining scheduled hours are not sufficient for the State to complete the planned Infrastructure Disaster Recovery Services testing, the Contractor will either extend the scheduled time to accommodate the planned testing, at no additional cost to the State, or will allow the State to reschedule the test and will not deduct the scheduled hours or test from the State's allotted hours and tests, as defined in Contract Section A.5, for the associated Disaster Recovery Environment.
- A.7. The Contractor shall make available a Recovery Center (a.k.a. Hotsite) for up to forty two (42) consecutive days and a Cold Site (a.k.a. Coldsite) for up to six (6) consecutive months, of adequate size for the contracted Environments, that will provide an effective means of minimizing the potential impact of an Infrastructure Disaster affecting the State's processing facilities and communications network.
- A.8. The Contractor will work with the State to develop a plan to provide the State access to a Cold Site in time to adequately transition from the Recovery Center to the Cold Site within the forty two (42) consecutive days allotted at the Recovery Center. If the Contractor is unable to provide a Cold Site in time for the State to adequately transition from the Recovery Center within the forty two (42) consecutive days allotted at the Recovery Center, the Contractor will allow the State to remain in the Recovery Center, at or below the Infrastructure Recovery Center Usage Fee – Days 31 thru 42 fee specified in Attachment B. Neither the State nor the Contractor will intentionally delay the State's transition to the Cold Site. The State will be responsible for the purchase and installation of equipment at the Cold Site. At the request of the State, the Contractor will assist with equipment installation. The State will compensate the Contractor for such installation in accordance with Contract Section C.3.b.
- A.9. The State will have the right, with the Contractor's prior approval, which shall not be unreasonably withheld, to place State-owned equipment in the Recovery Center for dedicated State Infrastructure Disaster Recovery Services purposes. Such equipment will be purchased by the State from State equipment contracts and shipped to the Contractor for installation. The Contractor shall provide cabinets compatible with the following specifications to house State-owned equipment at a per Equipment Cabinet price:
  - a. Width 29.53 inches (750 mm)  
Depth 42.13 inches (1070 mm)  
Caged Rail Horizontal Spacing 19 inches

Rack Height minimum 42U  
Secure, Lockable Door  
Caged Nuts and Screws

- b. One (1) 1U (24) port CAT6 (giga-speed) or higher patch panel
- c. One (1) 1U wire manager

The Contractor will make available additional patch panels and wire managers on a per item basis. The State will provide power strips with the equipment. The Contractor will supply redundant power in each Equipment Cabinet such that at least two (2) power strips will be on different power circuits. The Contractor will supply all fiber optic lines in pairs and terminated in the patch panel with LC connector. The State will specify the fiber optic strand quantities and power requirements on an as needed basis. The State will compensate the Contractor for equipment installation and facility usage in accordance with Contract Section C.3.b.

The equipment described above shall remain the property of the State. Upon Contract termination, the State will make arrangements to retrieve the equipment at the State's expense.

- A.10. The Contractor will provide a secure connection between the Recovery Center and the State's network via site-to-site virtual private network (VPN) connection thru the Internet or from a direct circuit connection, minimum speed of 50Mbps; such connection shall be approved by the State and located at a State data center, either in Nashville or Smyrna, Tennessee, designated by the State. The connection to the State's network must be able to be shared among multiple Contractor Recovery Centers if necessary. Unless the State agrees otherwise, the connection must be independent of the required connection in the Print Services Disaster Recovery Services Contract. The Contractor must provide the connectivity equipment (hardware and/or software) required at the Recovery Center to connect to the State's network, including the direct circuit connection, if such connection is used. The State will provide the connectivity equipment (hardware and/or software) installed at the State, excluding the direct circuit connection, if such connection is used.
- A.11. The Contractor will provide the required connectivity to send print files from the Recovery Center to the Contractor's Print Services Recovery Center during Infrastructure Disaster Recovery Services testing and during an Infrastructure Disaster event; such connectivity shall be secure and approved by the State.
- A.12. The Contractor will provide the required connectivity to transmit print files from the Recovery Center to the State's network during Infrastructure Disaster Recovery Services testing and during an Infrastructure Disaster event. The Contractor must provide the connectivity equipment (hardware and/or software) required at the Recovery Center to transmit print files to the State's network, using the secure connection identified in Contract Sections A.10. The State will provide the connectivity equipment (hardware and/or software) installed at the State, excluding the direct circuit connection, if such connection is used.
- A.13. The Contractor will provide the following during Infrastructure Disaster Recovery Services testing and during an Infrastructure Disaster event at no additional cost to the State:
  - a. testing support including technical support assistance
  - b. pre-load operating system(s) to State's specifications
  - c. public Internet access
  - d. remote system console (mainframe)
  - e. access to the Recovery Center
  - f. after Recovery Center usage, erase all State software and data from Contractor systems with multiple passes via a data destruction utility compliant with the United States Department of Defense (DOD) Drive Disposition Standards and confirm in writing (email is sufficient)
- A.14. At the request of the State, the Contractor will provide professional services to support Infrastructure Disaster Recovery Services related services at the Recovery Center, using the

Disaster Recovery Professional Services Job Classifications defined in Contract Attachment C. The State will compensate the Contractor for these services in accordance with Contract Section C.3.b.

**B. CONTRACT PERIOD:**

- B.1. Contract Term. This Contract shall be effective for the period beginning August 1, 2012 and ending on July 31, 2015 (the "Contract Term"). The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total Contract Term of no more than five (5) years, provided that such an extension of the Contract Term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's Maximum Liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.
- B.3. Declared Disaster Term Extension. If the State declares an Infrastructure Disaster and the Contract Term would otherwise expire during the time required to recover from that Infrastructure Disaster, the State, at its discretion, may automatically extend the existing Infrastructure Disaster Recovery Services under the Contract for an additional period or periods of time, not to exceed one (1) year, at the same rates as the final contract year.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the Maximum Liability of the State under this Contract exceed Four Million Twenty-Three Thousand Three Hundred Eighty-One Dollars (\$4,023,381.00) [the "Maximum Liability"]. The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the Maximum Liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The Maximum Liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated on a monthly basis based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.

- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the payment rates detailed in Contract Attachment B, Infrastructure Disaster Recovery Services Catalog.
- c. One (1) Infrastructure Declaration Fee will be paid to cover all Environments (one or more) declared simultaneously.
- d. One (1) Infrastructure Alert Fee will be paid to cover all Environments (one of more) alerted simultaneously.
- e. Infrastructure Recovery Center Usage Fee – Days 1 thru 30, Infrastructure Recovery Center Usage Fee – Days 31 thru 42, and Infrastructure Cold Site Usage Fee will be paid on a per day per Environment basis.
- f. The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Tricia Kitchens, Chief Technology Officer  
 State of Tennessee – OIR  
 Snodgrass TN Tower  
 312 Rosa L Parks Ave, 16<sup>th</sup> Floor  
 Nashville, TN 37243  
 Telephone: (615) 741-7122

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
  - (1) Invoice Number (assigned by the Contractor)
  - (2) Invoice Date
  - (3) Contract Number (assigned by the State)
  - (4) Customer Account Name: Department of Finance and Administration; Office for Information Resources
  - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
  - (6) Contractor Name
  - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
  - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
  - (9) Contractor Remittance Address
  - (10) Description of Delivered Service
  - (11) Complete Itemization of Charges, with a separately labeled section for each Disaster Recovery environment provided by the Contractor. The itemization shall comply with the following requirements:
    - i. The itemization shall be in the form of a spreadsheet, which will detail every hardware, software, and professional services item used in providing Infrastructure Disaster Recovery Services to the State.

- ii. The spreadsheet will contain accurate counts for each item, the applicable payment rate for each item (as detailed in Contract Attachment B), and an extended cost based on the line item count and payment rate.
  - iii. Total Amount Due for the invoice period, which will be the sum of the cost for all items, as described above.
- b. The Contractor understands and agrees that an invoice under this Contract shall:
  - (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
  - (2) only be submitted for completed service and shall not include any charge for future work;
  - (3) not include sales tax or shipping charges; and
  - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
  - a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
  - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.
- D. STANDARD TERMS AND CONDITIONS:**
  - D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

The State's Office for Information Resources will provide draft versions of amendments to the Comptroller's Office for their review and approval prior to the amendments being submitted to the Contractor for signature.

- D.3. Termination for Convenience. After six (6) months from the beginning of the Contract, the State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to terminate the Contract and withhold payments in excess of fair compensation for completed services.

- a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination Notice; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.
- b. Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State, which shall not be unreasonably withheld. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if

the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.



- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*.
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract as required by law.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Jimmy Simerly  
State of Tennessee – OIR  
Snodgrass TN Tower  
312 Rosa L Parks Ave, 17<sup>th</sup> Floor  
Nashville, TN 37243  
[Jimmy.Simerly@tn.gov](mailto:Jimmy.Simerly@tn.gov)  
Telephone: (615) 532-1781  
FAX: (615) 741-6164

The Contractor:

SunGard Availability Services LP  
680 East Swedesford Road  
Wayne, PA 19087  
[contract.admin@sungard.com](mailto:contract.admin@sungard.com)  
Telephone # (484) 582-2000  
FAX # (610) 225-1125

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory

and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
  - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
  - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
- b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the

Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

The State will maintain the confidentiality of material and information provided to it by Contractor according to the terms required of the Contractor under this section E.6. This confidentiality requirement does not apply to the contract or any amendments or incorporated documents, billing and payment information, or any other information that the State is required to disclose under the Tennessee Public Records Act, Tennessee Code Annotated section 10-7-503 et seq.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.7. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all HIPAA requirements applicable to the Contractor in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

E.8. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.

- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through f., below);
- b. any addenda to this Contract;
- c. any clarifications to the Contractor's proposal seeking this Contract;
- d. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
- e. any technical specifications provided to proposers during the procurement process to award this Contract;
- f. the Contractor's proposal seeking this Contract.

- E.9. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in section C.1. and as may be amended, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.
- E.10. Partial Takeover. After six (6) months from the beginning of the Contract, the State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.11. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. If such disclosure was due to Contractor's breach of contract or negligence, Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. If such disclosure was due to Contractor's breach of contract or negligence, Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.
- E.12. Reconfiguration of Disaster Recovery Environment(s). During the term of the Contract, the State, at its sole discretion, may reconfigure existing Disaster Recovery Environments using the itemized list of hardware, software, and services that is detailed in Contract Attachment B, Infrastructure Disaster Recovery Services Catalog, with a minimum thirty (30) day prior written notice to the Contractor. The Contractor shall have thirty (30) days, upon receipt of the written notice, to address the reconfigured Disaster Recovery Environments. The Contract will be amended to update Contract Attachment B, Infrastructure Disaster Recovery Services Catalog only when new cost items which are not already included in the catalog are required to reconfigure a Disaster Recovery Environment or a Disaster Recovery Environment is reconfigured (equipment quantities increased or decreased) such that the Disaster Event Services fees require adjustment.
- E.13. Removal of Disaster Recovery Environment(s). After six (6) months from the beginning of the Contract, the State may remove entire Disaster Recovery Environment(s) from the Contract at its sole discretion. The Contractor will be given a minimum thirty (30) day prior written notice of the removal with said notice to specify the removed Environment(s) and the date after which the Contractor is no longer obligated to provide services for the Environment(s). The removal of Environment(s) by the State will not alter in any way the Contractor's obligations to the remaining Disaster Recovery Environment(s) under this Contract. The State will discontinue payment of all fees associated with the removed Environment(s) and the Contractor will have no right to recover from the State any amount for the removal of the Environment(s).
- E.14. Assignment of Disaster Recovery Services. The Department of Finance and Administration reserves the right to assign some or all of the services required by this contract to another State of Tennessee department. In the event that the State determines that such assignment is necessary or desirable, the assignment will be effected by: (1) an amendment to this Contract and/or (2) a separate contract. The Contractor shall not unreasonably withhold consent to the assignment.

E.15. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a “Breach.” The State may declare a partial default under subsection (a)(2) or terminate the contract for cause under subsection (a)(3) or Section D.4 only if the Contractor has committed a material breach of the contract. A material breach is of such magnitude that it deprives the State of the benefits expected under the contract. In the circumstances of this contract, this could include, but is not limited to, failure to provide and maintain a minimum of two (2) Recovery Centers from which the Infrastructure Disaster Recovery Services may be provided.

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the State shall have available the remedy of actual damages and any other remedy available at law or equity.
- (2) Partial default— In the event of a Breach, the State may declare a partial default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a partial default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

Upon partial default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a partial default is taken.

- (3) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. State Breach— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

E.16. The State shall pay Contractor's invoices according to the Prompt Pay Act of 1985, Tennessee Code Annotated Sections 12-4-701 through 12-4-707.

**IN WITNESS WHEREOF,**

**SUNGARD AVAILABILITY SERVICES LP:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF FINANCE AND ADMINISTRATION:**

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**MARK A. EMKES, COMMISSIONER**

**DATE**

**CONTRACT ATTACHMENT A**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	<b>SUNGARD AVAILABILITY SERVICES LP</b>
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number)	23-2106195

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**



**Infrastructure Disaster Recovery Services Catalog**

Infrastructure Disaster Recovery Item	Unit	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost
Monthly Services						
1 Gartner MIP	Each Per Month	\$ 3.85	\$ 3.85	\$ 3.85	\$ 3.85	\$ 3.85
1 (Gigabyte) GB Main Storage	Each Per Month	\$ 34.00	\$ 34.00	\$ 34.00	\$ 34.00	\$ 34.00
1 (Terabyte) TB DASD Useable formatted – not raw space; non-SATA	Each Per Month	\$ 256.00	\$ 256.00	\$ 256.00	\$ 256.00	\$ 256.00
Open Systems Adapter (OSA)	Each Per Month	\$ 166.00	\$ 166.00	\$ 166.00	\$ 166.00	\$ 166.00
z Integrated Information Processor (zIIP)	Each Per Month	\$ 1,009.00	\$ 1,009.00	\$ 1,009.00	\$ 1,009.00	\$ 1,009.00
Crypto Express2	Each Per Month	\$ 202.00	\$ 202.00	\$ 202.00	\$ 202.00	\$ 202.00
9840C Tape Drive	Each Per Month	\$ 49.00	\$ 49.00	\$ 49.00	\$ 49.00	\$ 49.00
STK Silo (must support 9840C Tape Drives)	Each Per Month	\$ 1,092.00	\$ 1,092.00	\$ 1,092.00	\$ 1,092.00	\$ 1,092.00
Sun SPARC Enterprise M8000 8 quad core processors, 128 GB RAM	Each Per Month	\$ 3,321.00	\$ 3,321.00	\$ 3,321.00	\$ 3,321.00	\$ 3,321.00
Sun SPARC Enterprise M8000 4 quad core processors, 80 GB RAM	Each Per Month	\$ 1,715.00	\$ 1,715.00	\$ 1,715.00	\$ 1,715.00	\$ 1,715.00
Sun SPARC Enterprise M8000 2 quad core processors, 40 GB RAM	Each Per Month	\$ 851.00	\$ 851.00	\$ 851.00	\$ 851.00	\$ 851.00
Sun SPARC Enterprise T5120 1 quad core processor, 8 GB RAM	Each Per Month	\$ 282.00	\$ 282.00	\$ 282.00	\$ 282.00	\$ 282.00
HP ProLiant DL580 G7 4 quad core	Each Per Month	\$ 199.00	\$ 199.00	\$ 199.00	\$ 199.00	\$ 199.00

processors, 64 GB RAM						
HP ProLiant DL580 G7 2 quad core processors, 24 GB RAM	Each Per Month	\$ 146.00	\$ 146.00	\$ 146.00	\$ 146.00	\$ 146.00
HP ProLiant DL580 G7 1 quad core processor, 6 GB RAM	Each Per Month	\$ 119.00	\$ 119.00	\$ 119.00	\$ 119.00	\$ 119.00
1 TB SAN Storage (usable formatted space with RAID 5 configuration – not raw space)	Per Month	\$ 255.00	\$ 255.00	\$ 255.00	\$ 255.00	\$ 255.00
L700 Tape Library	Each Per Month	\$ 430.00	\$ 430.00	\$ 430.00	\$ 430.00	\$ 430.00
LTO-3 Tape Drives	Each Per Month	\$ 49.00	\$ 49.00	\$ 49.00	\$ 49.00	\$ 49.00
Recovery Center Connectivity	Per Month	\$ 950.00	\$ 950.00	\$ 950.00	\$ 950.00	\$ 950.00
<b>On-Request Services</b>						
Additional Testing Time	Each Per Eight (8) Hour Increment	\$ 7,350.00	\$ 7,350.00	\$ 7,350.00	\$ 7,350.00	\$ 7,350.00
Equipment Cabinet	Each Per Month	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00
Additional 1U (24) port CAT6 (giga-speed) or higher Patch Panel	Each Per Month	\$ 38.00	\$ 38.00	\$ 38.00	\$ 38.00	\$ 38.00
Additional 1U Wire Manager	Each Per Month	\$ 4.65	\$ 4.65	\$ 4.65	\$ 4.65	\$ 4.65
Single-mode Fiber in quantities of 6 strands (3 pair)	Each Per Foot Per Month	\$ 0.44	\$ 0.44	\$ 0.44	\$ 0.44	\$ 0.44
Single-mode Fiber in quantities of 12 strands (6 pair)	Each Per Foot Per Month	\$ 0.49	\$ 0.49	\$ 0.49	\$ 0.49	\$ 0.49
Single-mode Fiber in quantities of 24 strands (12 pair)	Each Per Foot Per Month	\$ 0.60	\$ 0.60	\$ 0.60	\$ 0.60	\$ 0.60
Multi-mode Fiber in quantities of 6 strands (3 pair)	Each Per Foot Per Month	\$ 0.49	\$ 0.49	\$ 0.49	\$ 0.49	\$ 0.49
Multi-mode Fiber in quantities of 12 strands (6 pair)	Each Per Foot Per Month	\$ 0.56	\$ 0.56	\$ 0.56	\$ 0.56	\$ 0.56

Multi-mode Fiber in quantities of 24 strands (12 pair)	Each Per Foot Per Month	\$ 0.77	\$ 0.77	\$ 0.77	\$ 0.77	\$ 0.77
Single Phase 120v, 20amp Power	Redundant Pair Per Month	\$ 740.00	\$ 740.00	\$ 740.00	\$ 740.00	\$ 740.00
Single Phase 120v, 30amp Power	Redundant Pair Per Month	\$ 1,110.00	\$ 1,110.00	\$ 1,110.00	\$ 1,110.00	\$ 1,110.00
Single Phase 208v, 20amp Power	Redundant Pair Per Month	\$ 1,285.00	\$ 1,285.00	\$ 1,285.00	\$ 1,285.00	\$ 1,285.00
Single Phase 208v, 30amp Power	Redundant Pair Per Month	\$ 1,920.00	\$ 1,920.00	\$ 1,920.00	\$ 1,920.00	\$ 1,920.00
Three Phase 208v, 20amp Power	Redundant Pair Per Month	\$ 2,220.00	\$ 2,220.00	\$ 2,220.00	\$ 2,220.00	\$ 2,220.00
Three Phase 208v, 30amp Power	Redundant Pair Per Month	\$ 3,330.00	\$ 3,330.00	\$ 3,330.00	\$ 3,330.00	\$ 3,330.00
Three Phase 208v, 50amp Power	Redundant Pair Per Month	\$ 5,550.00	\$ 5,550.00	\$ 5,550.00	\$ 5,550.00	\$ 5,550.00
Disaster Recovery Professional Services						
Mainframe Senior Operating System Support Specialist	Per Hour	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00
Mainframe Operating System Support Specialist	Per Hour	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00
Mainframe Senior System Software Specialist	Per Hour	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00
Mainframe System Software Specialist	Per Hour	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00
Mainframe Senior Operations Specialist	Per Hour	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00
Mainframe Operations Specialist	Per Hour	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00
Mainframe Tape Librarian	Per Hour	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00
Mainframe Tape Handler	Per Hour	\$ 35.00	\$ 35.00	\$ 35.00	\$ 35.00	\$ 35.00
Network/Security Specialist	Per Hour	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00
System Administrator	Per Hour	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00

Windows Specialist	Per Hour	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00
Unix/Linux Specialist	Per Hour	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00
Disaster Event Services						
Infrastructure Declaration Fee	Per Incident	\$12,500.00	\$12,500.00	\$12,500.00	\$12,500.00	\$12,500.00
Infrastructure Alert Fee	Per Incident	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Infrastructure Recovery Center Usage Fee – Days 1 thru 30	Per Day Per Environment	\$ 5,750.00	\$ 5,750.00	\$ 5,750.00	\$ 5,750.00	\$ 5,750.00
Infrastructure Recovery Center Usage Fee – Days 31 thru 42	Per Day Per Environment	\$ 10,750.00	\$ 10,750.00	\$ 10,750.00	\$ 10,750.00	\$ 10,750.00
Infrastructure Cold Site Usage Fee	Per Day Per Environment	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00

## Disaster Recovery Professional Services Job Classifications

ROLE	KNOWLEDGE	EXPERIENCE
Mainframe Senior Operating System Support Specialist	Expert in Operating systems capable of performing system setup tasks, systems support (installs and maintenance), system tuning, problem determination for zOS, LPARS, and JES2. Must have experience with zOS, JES2, RACF, CICS, HSM, DB2, IMS, VSAM, JCL, TSO, and COBOL. Must be able to work unsupervised.	Minimum 5 years experience with large mainframe environment.
Mainframe Operating System Support Specialist	Works under general supervision of the Senior Operating System Specialist. Working knowledge with operating systems capable of performing system setup tasks, systems support (installs and maintenance), system tuning, problem determination for zOS, LPARS, and JES2. Must have experience with zOS, JES2, RACF, CICS, HSM, DB2, IMS, VSAM, JCL, TSO, and COBOL. Must be able to work with minimal supervision.	Minimum 2 years experience with large mainframe environment.
Mainframe Senior System Software Specialist	Expert knowledge with a variety of third party system software products. Capable of performing system setup tasks, systems support (installs and maintenance), software tuning, and problem determination. Familiarity with mainframe software products from vendors such as BMC, CA, IBM, LRS, Compuware, and ASG. Must have expert knowledge with JCL, TSO, and zOS.	Minimum 5 years experience with large mainframe environment.
Mainframe System Software Specialist	Working knowledge with a variety of third party system software products. Capable of performing system setup tasks, systems support (installs and maintenance), software tuning, and problem determination. Familiarity with mainframe software products from vendors such as BMC, CA, IBM, LRS, Compuware, and ASG. Must have expert knowledge with JCL, TSO, and zOS. Must work with minimal supervision.	Minimum 2 years experience with large mainframe environment.
Mainframe Senior Operations Specialist	Expert knowledge of the day to day operations of a mainframe data center. This includes in depth operating command knowledge with software such zOS, JES2, CA7, DB2, CICS, IMS, CA applications. Must be capable of scheduling jobs, submitting and restarting jobs, and know JCL. Must be able to work unsupervised.	Minimum 5 years experience with large mainframe environment.

ROLE	KNOWLEDGE	EXPERIENCE
Mainframe Operations Specialist	Familiarity with the day to day operations of a mainframe data center. This includes general operating command knowledge with software such as zOS, JES2, CA7, DB2, CICS, IMS, CA applications. Must be capable of scheduling jobs, submitting and restarting jobs, and know JCL. Must be able to work with minimal supervision.	Minimum 2 years experience with large mainframe environment.
Mainframe Tape Librarian	Expert knowledge of the operation of a tape library, tape silo software and hardware, and capable of supervising tape handlers in the day to day tasks of operating a tape library. This includes the loading and unloading of the silo, manage the tape management system. Must have working knowledge with Tape Management Software.	Minimum 2 years experience with large mainframe environment.
Mainframe Tape Handler	This includes personnel to handle the loading and unloading of tapes from the tape library (silo).	Minimum 1 year experience with large mainframe environment.
Network/Security Specialist	Expert knowledge and skills to configure routers, switches, firewalls, and load balancers from factory settings to meet the configurations for the State. This includes hands-on experience in the configuration of Cisco routers, Juniper and Check Point Firewalls, F5 LTM and GTM load balancers and secure socket layer accelerators.	Minimum 5 years experience with related network/security hands-on operations.
System Administrator	Expert knowledge in building and installing/racking physical servers, including cable and fiber installations and connections. Good understanding of security issues on Internet-facing web infrastructures; knowledge of DNS and related protocols and networking technologies as well as limited knowledge of database administration	Minimum 2 years experience with related hands-on system administration.
Windows Specialist	Expert knowledge of Microsoft Windows servers and workstations and related software products. Capable of performing system setup tasks, systems support (installs and maintenance), software tuning, and problem determination. Extensive knowledge of physical networking and network protocols, services and security including: TCP-IP, Switching, Routing, VLAN's, DNS, DHCP, LDAP, NFS. Knowledgeable of a range of operating systems including Mac/Linux/UNIX and how they interoperate. Capable of working with minimal supervision.	Minimum 5 years experience with related hands-on Windows workstation and server operations.
Unix/Linux Specialist	Expert knowledge and understanding of the Linux/Unix environment. Capable of installing and supporting many Linux distributions. Extensive knowledge of standard system tools with the ability to use them to automate complex system tasks. Extensive knowledge of physical networking and network protocols, services and security including: TCP-IP, Switching, Routing, VLAN's, DNS, DHCP, LDAP, NFS. Knowledgeable of a range of operating	Minimum 5 years experience with related hands-on Unix/Linux server operations.

ROLE	KNOWLEDGE	EXPERIENCE
	systems including Windows server/Mac/Unix and how they interoperate.	

## RECOVERY SERVICES

A. **RECOVERY SERVICES.** The Contract specifies a State Location ("Location") (901 5<sup>th</sup> Ave N. Nashville, TN), the recovery services to be provided by Contractor to the State for that Location ("Recovery Services"), the fees to be paid by the State to Contractor for those services, and any other applicable terms.

1. **DISASTER.** A "Disaster" is any unplanned event or condition that renders The State unable to use a Location or the equipment situated there for its intended computer processing and related purposes. By signing the Contract, The State warrants that the Location specified in the Contract is not at that time experiencing a Disaster. The State may declare a Disaster by having one of its designated representatives give notice to Contractor stating that a Disaster occurred, identifying the affected Location, and specifying which Recovery Services The State believes will be required. Contractor will then follow The State's reasonable declaration procedures as provided to Contractor in the Disaster Declaration Authority form.
 

(Managed IT Services & Advanced Recovery Services) with the exception of Addendum 2 Section B.3.c (Implementation Services).
2. **SELECTED SERVICES.** Whenever The State declares a Disaster, the Recovery Services to be provided by Contractor to The State shall be the following services as selected by The State at the State's sole discretion:
  - (a) **Center-Based Recovery Services.** Immediate and exclusive use of the services described below ("Center-Based Recovery Services"), which The State may use during the period of time stated below, provided at a Contractor facility:
    - (i) **Hotsite.** An installed, fully operational computer system and networking capability ("Hotsite"), equal to or better than (in all material respects including equipment quality and processing capacity) the Hotsite Configuration described in the Contract, which The State may use for six (6) weeks.
    - (ii) **Coldsite.** Environmentally prepared computer space ("Coldsite"), properly equipped to facilitate the installation of a computer system comparable to the contracted Environments, which the State may use for six (6) months, subject to the provisions of Addendum 2
 

(iii) **Office Space.** An adequate and reasonable amount of office space in the same facility where the Hotsite is located, properly equipped to facilitate the installation of terminals, which The State may use to operate that Hotsite.

(iv) **Dedicated Shelf Space or Cabinet.** A dedicated shelf or cabinet in the Contractor facility which is in accordance with Contract Section A.9. The Dedicated Shelf Space or Cabinet is being provided for the placement of The State equipment supporting The State requirements for Tests or in the event of a Disaster. The State will provide Contractor with the model and serial number of The State equipment prior to placement of The State equipment into the Shelf Space or Cabinet.
  - (b) **Network Services.** Use, within two (2) hours after Contractor receives the Disaster declaration notice, of the network services described below ("Network Services"), which The State may use for six (6) weeks:
    - (i) **Center to Center.** On-demand connectivity among Contractor recovery centers using the Contractor Global Network ("SGN") in accordance with the network connectivity described in the Contract.
    - (ii) **Dedicated Circuit.** Dedicated connectivity between The State location described in the Contract and the Contractor facility or SGN POP (point of presence) described in the Contract, using a dedicated circuit that is procured and installed by Contractor.



- (iii) **IP ReDirect Services.** On-demand, point-to-point or point-to-multipoint, Internet Protocol (IP) connectivity between the IP-enabled SGN POP where The State is accessing the SGN and the IP-enabled Contractor facility described in the Contract, with such connectivity delivered using a single Ethernet interface directly attached to a router at The State Location.
  - (iv) **Web ReDirect Services.** On-demand access to the Internet from the Contractor facility described in the Contract, using any of the multiple Internet service providers under contract with Contractor (which may require The State to set up domains to use the Web ReDirect Services).
  - (v) **MetroBandwidth.** On-demand access to transport infrastructure connecting two Contractor service areas within the same building or between two service areas located in separate buildings within the same metropolitan area as described in the Contract.
  - (vi) **Telephone Line.** Analog line available for use in conjunction with a Dedicated Cabinet or Shelf contracted for by The State at the Contractor facility.
3. **EXTENDED USE.** During a Disaster, The State may continue to use the Center-Based Recovery Services or the Network Services beyond the periods stated in Contract Sections A.7 and A.8, provided that this extended use shall be subject to immediate termination if and when any other customer declares a disaster and requires use of the Recovery Resources then being utilized by The State.
4. **COMPREHENSIVE DISASTER RECOVERY SUPPORT.** Whenever The State uses Recovery Services during a Disaster, Contractor's Support Staff (consisting of operations, communications, security, transportation, systems software and customer support personnel, as appropriate) shall provide comprehensive support to The State on a 24-hour-a-day, 7-day-a-week basis, as needed.
5. **TESTS.** Promptly after execution of the Contract and at no additional cost to the State, Contractor shall either notify The State of available times to schedule a training workshop at a Contractor facility or provide instructions to The State to conduct a computer based training workshop. The State may use certain Recovery Services to test its disaster recovery capability ("Test") in accordance with Contract Section A.5. During each Test, Contractor's Support Staff shall provide reasonable supplies and support to The State as needed, subject to availability. In order for Contractor to provide support to The State for a scheduled Test, all Test plans must be provided to Contractor at least three (3) weeks prior to the Test date. Upon receipt of The State's Test plan, Contractor will then assign a Contractor technical coordinator to review The State's Test plan and coordinate Test support activities. Test time is available on a 24-hour-a-day, 7-day-a-week basis. All Tests shall be subject to immediate cancellation or termination by Contractor, and shall be rescheduled as soon as possible, if and when any other customer declares a disaster and requests use of the Recovery Services being tested.
6. **E-TESTING PROGRAM.** The State may, at its option, elect to participate in Contractor's E-Testing Program. The E-Testing Program is a web-based service designed by Contractor to facilitate efficiency of pretest communications, by allowing The State to complete and submit Test plans online for any scheduled Test. The State shall use the E-Testing Program only for its own internal purposes in testing certain Recovery Services with Contractor. Periodically, in its sole discretion, Contractor may change or discontinue the E-Testing Program. Contractor shall not be liable for any damages incurred by The State as a result of The State's access to, use of, or retrieval of The State's Test plans, including damages caused by any viruses. Contractor represents that it shall not knowingly code or introduce any virus or other disabling code into the systems used to provide the E-Testing Program or The State's Test plan. Contractor shall use commercially

reasonable efforts to assist The State, at no charge, in mitigating the effects of any virus that is coded or introduced into the system.

7. **TEST SERVICES.** Contractor's testing services are designed to provide reliable and repeatable Test services for operating system, application and data restorations ("Test Services") while The State is using the Recovery Services for a Test. Whenever The State schedules a Test of the Recovery Services, the Test Services provided by Contractor to The State shall be for the contracted Disaster Recovery Environment(s) identified by The State.
8. **SOFTWARE.** All systems and utility software which Contractor has installed on the equipment used to provide the Recovery Services may be used by The State during a Disaster or a Test.
9. **TECHNOLOGY EXCHANGE.** Upon The State's request, Contractor will provide a list of computer and communications equipment that is then currently available to enhance the Recovery Services. The State may exchange certain components of its

configuration for hardware representing newer technology, in accordance with Contract Section E.12.

10. **ACCOUNT EXECUTIVE.** Contractor shall assign an Account Executive to The State to assist in monitoring the continued viability of The State's disaster recovery capability and to facilitate ongoing communications between The State and Contractor.
11. **HOTLINE.** Contractor shall maintain a toll-free customer support telephone service, on a 24-hour-a-day, 7-day-a-week basis, which The State may use as needed.
12. **USER GUIDE.** The State shall receive on-line access to Contractor's current User Guide for the Recovery Services and all applicable updates and revisions, as and when issued. Access is available at <http://www.mysungard.com>.

**B. MAINTENANCE AND USE OF RECOVERY RESOURCES.** The terms of this Section B are intended to ensure that the facilities, equipment, network and other resources used by Contractor to provide the Recovery Services ("Recovery Resources") are properly maintained and used, and to protect the respective interests of the parties in using the Recovery Resources.

1. **MAINTENANCE.** Contractor shall maintain vendor-specified proper operating environments at its facilities and in its vehicles used to provide the Recovery Services. Contractor shall adhere to vendor-recommended procedures and policies for proper maintenance of the Recovery Resources, including necessary remedial maintenance and regularly scheduled preventive maintenance. **Contractor warrants to The State that the Recovery Resources shall be maintained in a state of readiness at all times, consistent with Contractor's obligations under the Contract.**
2. **SIGNIFICANT CHANGES.** Contractor may change the Recovery Resources and shall give written notice to The State at least 120 days before making any significant change that might substantially and adversely impact The State. If the change involves the removal of a hardware or software item from the recovery environment, such change will only be made if it is the direct result of the manufacturer of the item overtly declaring that the item is at "end-of-

life." The State shall then have an adequate and reasonable number of free additional testing hours to Test the affected Recovery Services. If, in The State's reasonable judgment, any such change substantially and adversely impacts The State to the extent that The State cannot use the affected Recovery Services, then The State may move to mitigate the impact of the change on the affected services. The State's mitigation may take the form of: (i) reconfiguring the State's Disaster Recovery Environment in accordance with Contract Section E.12, to remove the item or to use an item that is supported by the Contractor, in which case the affected services shall continue, after adequate testing, such testing to be performed at the Contractor's expense; or (ii) remove the Disaster Recovery Environment in accordance with Contract Section E.13.

3. **AUDITS.** At any time except when the Recovery Resources are being used during a disaster or a confidential test, The State may, at its expense, audit the Recovery Resources to

verify Contractor's compliance with the Contract. Contractor also shall permit any regulatory authority having jurisdiction over The State to inspect the Recovery Resources. Contractor shall, at its expense, have the Recovery Resources annually reviewed by an independent third-party auditor, whose reports shall be furnished to The State upon request.

4. **STANDARD PROCEDURES.** Contractor shall maintain reasonable and uniform policies regarding security, safety, operations and other procedures for accessing and using the Recovery Resources during disasters and tests. In the case of network resources, these policies ("Network Policies") incorporate the policies, rules and regulations of Contractor's underlying network and Internet service providers. All of these policies are included in Contractor's on-line User Guide and in other written documents provided by Contractor to its The States from time to time. To the extent that these policies do not conflict with the terms of the Contract, both Contractor and The State shall comply with these policies in all material respects and shall use all Recovery Resources in accordance with manufacturer specifications.
5. **SPECIAL PROCEDURES.** If The State gives written notice to Contractor describing any

special data protection or other security procedures beyond those described in the Contract, used by The State, then Contractor shall use commercially reasonable efforts to help implement those procedures whenever The State is using the Recovery Resources. The State shall be responsible for any additional expenses reasonably incurred by Contractor in implementing The State's special procedures. Such expenses not covered by rates specified in the Contract shall require amendment in accordance with Contract Section D.2. The State is responsible for the encryption of The State data when utilizing any Recovery Resources.

6. **NETWORK RESOURCES.** Contractor shall privately manage the SGN as a protocol-independent, multi-layer network. After The State has been switched onto the SGN, the applicable Network Services will be available on a 24-hour-a-day, 7-day-a-week basis excluding downtime attributable to routine and preventative maintenance. The Network Services are provided subject to the availability of the necessary services by Contractor's underlying network and Internet service providers.

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**C. MULTIPLE DISASTER.** The State's rights of immediate and exclusive use of the Recovery Services, as provided in the Contract, shall be subject to the possibility that one or more other customers ("other affected customers") could declare a disaster at the same time as (or before or after) The State and require use of the same Recovery Resources at the same time as The State ("Multiple Disaster"). The following provisions are intended to avoid or minimize contention for Recovery Resources during Multiple Disasters.

1. **PRIORITY RESOURCES AND SHARED RESOURCES.** All Recovery Resources shall be available on a priority use basis ("Priority Resources") except for those designated by Contractor as available on a shared use basis ("Shared Resources"). Contractor's designations of Shared Resources shall be made in its reasonable discretion and shall be subject to change without notice.
2. **ACCESS AND USE PROCEDURES.** Access to and use of Recovery Resources during disasters shall depend upon whether the Recovery Resources are Priority Resources or Shared Resources and, with respect to Priority Resources, the order in which disasters are declared. Contractor shall maintain records of its receipt of disaster declarations, which shall be the exclusive basis for determining the

order in which disasters are declared. The State will make a Disaster declaration in the form of a phone call. The Contractor will log all phone calls of Disaster declarations to determine the order in which disasters are declared by its customers. The Contractor shall acknowledge receipt of The State's Disaster declaration by issuance of a Disaster Declaration Authority form to The State.

- (a) The State shall have priority rights of access to and use of applicable Priority Resources that are not then being used by other affected customers who previously declared disasters. Use of such Priority Resources is exclusive for as long as The State is entitled to use them under the Contract.

- (b) The State and all other affected customers shall have equal rights of access to and use of applicable Shared Resources, irrespective of the order in which disasters occur or are declared. Use of Shared Resources may be exclusive at times, but remains subject to the possible need for shared or allocated use with other affected customers. In an effort to avoid the need for shared or allocated use of any Shared Resources, Contractor shall, to the fullest extent possible under the circumstances, take full advantage of, and provide access to, all of its other available Shared Resources.
  - (c) If applicable Priority Resources and applicable Shared Resources are both available, The State may choose which type to use.
  - (d) The State shall cooperate with Contractor and all other affected customers as reasonably required under the circumstances, including to coordinate the efficient use of Recovery Resources, to avoid or minimize the need for shared or allocated use of Shared Resources, and to implement any necessary plans for shared or allocated use of Shared Resources.
  - (e) If a Multiple Disaster is widespread or extreme, then, notwithstanding the foregoing provisions, Contractor may implement emergency procedures that are necessary, in Contractor's reasonable judgment, to allocate Recovery Resources in order to address applicable national interests and comparable concerns.
3. **MULTIPLE DISASTER PROTECTION.** To lower the probability of a Multiple Disaster, Contractor shall comply with the following terms:
- (a) No other customer shall be granted any greater rights of access to or use of the Recovery Resources than are granted to The State under the Contract.
  - (b) No agreement to provide use of any Recovery Resources shall be entered into at a time when the customer location to be serviced is then currently experiencing a disaster.
- Contractor also shall comply with the following:
- (c) To discourage unnecessary disaster declarations, Disaster Event Services fees, as provided in Contract Attachment B, shall be charged whenever a customer declares a disaster.
  - (d) To discourage unnecessary use of the Recovery Resources, daily usage fees, as provided in Contract Attachment B, shall be charged for use of the Recovery Resources other than for tests.
4. **CRISIS MANAGEMENT.** Whenever Contractor learns of an approaching storm or other situation that might cause a Multiple Disaster, Contractor shall monitor the situation and use commercially reasonable efforts to coordinate contingency plans with all potentially affected customers.

## MANAGED IT SERVICES & ADVANCED RECOVERY SERVICES

### A. POLICIES AND SERVICES GUIDE

The services provided under this Contract shall at all times be used in compliance with SunGard's then-current general policies and guidelines ("General Policies") and the policies and guidelines of SunGard's underlying telecommunications providers ("Network Policies") (collectively, the General Policies and Network Policies are sometimes herein referred to as "Policies"). To the extent that these Policies do not conflict with the terms of the Contract or State law, The State agrees to be bound by the Policies, as amended. If the Contractor makes any changes to its General Policies or Network Policies that materially and adversely affect the State's use of the Services, the State may terminate the Services with prior written notice to Contractor. With respect to changes to the General Policies, in addition to the right to terminate, the State may also first discuss with the Contractor the reasons for the change and any modifications that the State may suggest to the change. Contractor shall use commercially reasonable efforts to modify the changes in accordance with the State's request. All Policies, including change management policies and procedures, and additional detail regarding the specifications of the service offerings, are set forth in SunGard's Services Guide, which is available to The State at SunGard's the State portal <http://www.MySunGard.com> ("Portal"). In addition, all implementation services which are included as part of a service offering, are detailed in the Services Guide.

Upon completion and full execution of the Contract, The State will receive access to the Portal. Upon receiving access and at The State's sole discretion, The State shall enter the Portal and subscribe to the Services Guide in accordance with the instructions specified in the Portal and shall provide an email address(es) electronically so that notices of changes to the Services Guide will automatically be sent to the email address(es) provided. The email will notify The State that the Services Guide has been changed and upon accessing the Services Guide, the cover page will indicate the Section(s) modified, deleted or added.

### B. HOSTING SERVICES

#### 1. Space

a. SunGard hereby grants to The State the right to use the Space (as defined in the Contract) for the placement and maintenance of the computer and communications equipment specified by The State ("Equipment") which may be interconnected to the Network Services offered by SunGard (as defined herein) or to other communications carriers via facilities offered by SunGard. The Equipment and any necessary software ("Software") may be provided by The State ("The State-provided Equipment" or "The State-provided Software") or by SunGard ("SunGard-provided Equipment" or "SunGard-provided Software") as specified in the Contract. The State acknowledges that the Space shall be used in accordance with the Equipment vendor's specifications for electrical, airflow, and clearance.

If The State desires to install Equipment in the Space that exceeds the vendor specification(s), SunGard reserves the right to require The State to contract for additional Space. This Contract does not create any interest in real estate and is strictly an agreement for the provision of services, which are personal in nature to the parties. The Monthly Fees and any other fees in connection with The State's use of the Space are set forth in the Contract. The State's use of the Space shall not interfere with any other SunGard customers' use of SunGard's facilities. The State represents that it has the full legal right to utilize any The State-provided Equipment and Software. The Equipment shall operate on conditioned UPS-based power with transparent and immediate access to a backup power source capable of sustaining power to the Equipment during any interruption to the primary power source.

b. SunGard shall perform such janitorial services, environmental systems maintenance, power plant maintenance and other services as are reasonably required to maintain the facility in which the Space is located in good condition suitable for the placement of Equipment. The

State shall keep the Space clear of all refuse, cardboard or any potentially hazardous material. The State shall maintain the Space in an orderly and safe condition, and shall return the Space to SunGard at removal of the Equipment or the conclusion of the Contract in the same condition (reasonable wear and tear excepted) as when such Space was delivered to The State. **EXCEPT AS EXPRESSLY STATED HEREIN, THE SPACE SHALL BE DELIVERED AND ACCEPTED "AS IS". THE SPACE SHALL BE IN SECURE FACILITIES MONITORED TWENTY-FOUR (24) HOURS PER DAY, SEVEN (7) DAYS PER WEEK BY ON-SITE STAFF, WITH CARD KEY ACCESS AND CLOSED CIRCUIT TV MONITORING, CONDITIONED POWER UTILIZING UPS SYSTEMS AND BACK-UP POWER GENERATOR CAPABILITY ("INFRASTRUCTURE").** SunGard represents that it will not materially diminish such Infrastructure at the Designated SunGard Facility during the Contract Term. At its sole risk and expense, The State shall be responsible for installation of The State-provided Equipment in the Space, unless The State elects to contract for Hardware Installation Services as set forth herein and the Contract. If The State elects to contract for Hardware Installation Services, then SunGard shall be responsible for the installation of The State-provided Equipment to the extent provided herein. At its sole risk and expense, The State shall be responsible for installation of The State-provided Software in the Space. Upon removal of the Equipment at The State's request or termination or expiration of the Contract, The State shall be responsible for removal of The State-provided Equipment and Software from the Space within ten (10) business days of such removal, termination, or expiration.

c. In addition to the Policies, The State shall abide by any posted rules relating to the use of, access to, or security measures respecting the Space. The State-provided Equipment shall be installed, operated, inspected, maintained, repaired, replaced and removed only by qualified agents of The State who are properly licensed, if applicable, a list of whom shall be provided to SunGard in advance of any such activity. The State shall not permit any liens to be placed against all or any portion of the Space or any SunGard-provided Equipment or Software. The State shall not make any material alterations to the Space without the prior written consent of SunGard. In the event that unauthorized parties

gain access to the Space through access cards, keys or other access devices provided to The State ("Access Devices"), The State shall be responsible for any damages incurred as a result thereof. The State shall be responsible for the cost of replacing any Access Devices lost or stolen after delivery thereof to The State.

d. SunGard reserves the right to change the location or configuration of the Space, at SunGard's sole expense, within the Designated SunGard Facility or to another SunGard facility; provided, however, that SunGard shall not arbitrarily or discriminatorily require such changes. SunGard and The State shall work in good faith to minimize any disruption to The State's Services that may be caused by such change in location or configuration of the Space. If the location of the Space is to be moved to another SunGard facility, SunGard shall provide The State with at least ninety (90) days prior written notice of such relocation and The State shall have the right to (a) elect to be relocated to another SunGard facility, or (b) elect to remove the Equipment without penalty. The State shall provide SunGard with written notice of its decision regarding the preceding sentence within thirty (30) days after receipt of SunGard's written notice. In addition, SunGard reserves the right to upgrade or modify the infrastructure used to provide the Services provided that any such change will not adversely affect The State's environment in the Space.

e. The State shall cover its liability related to equipment placed on Contractor's premises through self insurance. Contractor shall provide written notice to the State of any claim arising from such equipment. The Contractor's remedy for such claim shall be in the Tennessee Claims Commission, Tennessee Code Annotated Section 9-8-101 et seq.

f. SunGard shall provide to The State (including any of its employees, agents and other authorized representatives as The State may from time to time reasonably designate in writing), access to the part of the Designated SunGard Facility from which SunGard is providing the Space, twenty-four (24) hours per day, seven (7) days per week, including statutory holidays. All of The State's designees shall adhere to SunGard's Policies.

g. **Space Options** – The State may subscribe to any of the following options available relating to Space: (i) SunGard-provided 19" Cabinet and (ii)

Secure Cabinet. The State shall pay for Space at the rates set forth in the Contract.

**(i) SunGard-provided 19" Cabinet** - The SunGard-provided 19" Cabinet option includes: (i) a minimum of 42 U EIA rack space for the Equipment; (ii) proper air ventilation for the Equipment; (iii) two (2) stationary equipment shelves; and (iv) security by lock and key, managed by SunGard.

**(ii) Secure Cabinet** - The Secure Cabinet option includes: (i) a SunGard-provided 19" Cabinet (as defined above); (ii) Space to support the SunGard-provided Cabinet; (iii) and the redundant power configuration as set forth in the Contract with the corresponding voltage ("V") and amperage ("A").

h. At SunGard's discretion, any cabling required to inter-connect any SunGard-provided 19" Cabinet(s) may require the use of industry standard patch panels. If SunGard determines that patch panels are required, SunGard reserves the right to install mutually agreed upon patch panel infrastructure at the rates set forth in the Contract.

## **2. Power**

SunGard shall provide The State with the power configuration within the Designated SunGard Facility as set forth in the Contract. With respect to one hundred and twenty (120) Volt power, SunGard will provide the power feed(s) with a minimum of a 12 outlet power strip. If The State requires a power strip for 208/220 Volt power feed(s), The State is responsible for providing the necessary 19" EIA rack-mounted power strip. Where The State powers Equipment with a single Standard Power Circuit ("A-Side Circuit"), The State is responsible to ensure that the total of the manufacturer's rated amperage for all Equipment on any A-Side Circuit does not exceed eighty-percent (80%) of the rated amperage of that circuit. If The State contracts for an A-Side Circuit and a redundant Standard Power Circuit ("B-Side Circuit"), The State is responsible to ensure that the total of the manufacturer's rated amperage for all Equipment on the A & B Side Circuit pair does not exceed eighty-percent (80%) of the rated amperage of one of the circuits in the pair.

SunGard reserves the right to audit the power consumption of The State. If during such audit, SunGard determines: (i) The State is using

redundant power in a non-redundant fashion; or (ii) The State is drawing more power than specified in the Contract, then SunGard shall notify The State in writing and The State shall have three (3) business days to either balance or reduce its power loads respectively, or request an upgrade from SunGard to provide additional capacity.

a. **Standard Power Circuit.** A Standard Power Circuit is a single one hundred and twenty (120) Volt, twenty (20) AMP power feed.

b. **Power Infrastructure Upgrade B-Side.** SunGard shall provide a redundant B-Side Circuit to The State's A-Side Circuit as set forth in the Contract with the corresponding voltage (V) and amperage (A).

c. **Power Infrastructure Upgrade** ("Additional Power"). The Power Infrastructure Upgrade option(s) provides The State with additional power capacity, as set forth in the Contract on both the A-Side Circuit(s) and B-Side Circuit(s), with the corresponding voltage (V) and amperage (A).

SunGard reserves the right to determine, in its sole reasonable judgment, its ability to allow The State to contract for additional power based upon the then available power at the Designated SunGard Facility. Any one time installation costs or any additional Monthly Fees related to additional power contracted for will be as set forth in the Contract. Such installation costs or Monthly Fees not covered by rates specified in the Contract shall require amendment in accordance with Contract Section D.2.

## **3. Support Services**

a. **Hardware Installation Services.** SunGard shall provide Hardware Installation Services for the Equipment, as requested by The State. Hardware Installation Services include the one-time installation of hardware devices and do not include on-going support. Hardware Installation Services include: (i) the unpacking and installation of the Equipment into nineteen inch (19") computer racks or cabinets in accordance with hardware vendor recommendations and The State requirements; (ii) the installation of network cables and cross-connects; and (iii) floor cutouts, as necessary.

b. **Operational Support Services.** SunGard will provide The State with access to technical personnel to assist The State on a 24x7x365 basis at the rates set forth in the Contract.

Operational Support Services shall include: (i) the execution of a command or series of commands as directed by The State to determine operating status or to facilitate configuration changes; (ii) enlisting of vendor support as requested by The State and as available pursuant to The State's agreement with the applicable vendor; (iii) visual inspection of Equipment and power up, restart or reboot as directed by The State; (iv) insertion and ejection of media as directed by The State; and (v) preparation of media for pickup at the Designated SunGard Facility as requested by The State. The State is responsible for providing all media, related materials, storage containers, procedures and any off-site storage contract for the media.

c. **Implementation Services.** Contractor shall provide Implementation Services for the Equipment and Software as defined in the Contract. Implementation Services include project management, project planning and assistance with regard to the preparation of the environment at the Designated Recovery Center in support of the Services. Following execution of the Contract, Contractor will coordinate a teleconference call with The State's program sponsor to prepare for the project. During the conference call, Contractor will: (i) review and confirm project objectives, scope and approach; (ii) establish project timeline, schedule and milestones; (iii) review project assumptions; (iv) assist The State in reviewing existing recovery capability and the supporting environment; and (v) review The State-provided documentation and diagrams supporting the Services.

A project plan will be developed which will define the infrastructure activities required to install the Equipment and Software. The State is responsible for the overall project plan that reflects how the solution will be implemented at the The State Facility. Contractor will: (i) manage the installation of any The State provided Equipment to be installed at the Designated Recovery Center and (ii) manage the preparation of the supporting environment at the Designated Recovery Center for installation of the Equipment and Software, which includes power, cooling, dial-in phone lines, stanchions and any other site preparation contracted-for in the Contract. The State acknowledges that (i) Contractor relied upon the detailed information supplied by The State in order to accurately determine the correct size of any disk and

bandwidth requirements to facilitate an Advanced Recovery solution.

At the conclusion of the implementation, Contractor will: (i) verify the connectivity of the Equipment at the Designated Recovery Center to The State's Location, (ii) verify the connectivity between the storage device(s) and the contracted-for Recovery Services at the Designated Recovery Center, (iii) IPL or boot-up operating system(s) on the contracted-for Recovery Services; and (iv) in conjunction with The State, validate the data on the storage device(s) during a test at the Designated Recovery Center, and such test will not exceed 8-hours. All validation testing is limited to one (1) system per contracted for Recovery Services platform. In the event that additional test time is necessary, The State will be charged for such test time in accordance with the Contract. Implementation will be considered complete when the following have been demonstrated or documented: (i) the Equipment listed on the Contract is installed at the Designated Recovery Center and available for use by The State; (ii) if contracted for, the recovery Test Plan (within the Designated Recovery Center) is updated to reflect any change in supporting procedures; and (iii) the procedures for use by The State and Contractor with regard to the Services have been documented ("Operational Procedures"). A final copy of the Operational Procedures, including problem and change management procedures, will be provided to The State. Within five (5) business days of receipt of the customized Operational Procedures, The State will advise Contractor of any requested changes to the documentation.

In order to help ensure success of the implementation of the Services, The State shall: (i) assign an executive sponsor to ensure ongoing The State focus and support; (ii) provide technical resources to assist with the implementation of the Services; (iii) provide an access list of person(s) authorized for: access, opening trouble tickets, scheduling maintenance, requesting changes to the Equipment or Operational Procedures at the Designated Recovery Center and identify those employees authorized to request modifications to the access list; (iv) provide timely access to and participation of The State personnel during implementation activities, in accordance with the schedule mutually agreed upon; and (v) provide a single point of contact that will work with Contractor to coordinate scheduling and logistical support.



## C. NETWORK SERVICES

**1.** Network services include those network services and Internet Access Services (as defined below) set forth in the Contract and as described below ("Network Services"). Network Services are only available to a customer who has subscribed to other Service(s) under this Contract. The Network Services set forth in the Contract shall be made available to The State on an exclusive, 24-hour a day, 7-days per week basis (excluding downtime attributable to previously scheduled routine and preventative maintenance). All circuits will be connected between the entry point on the SunGard network, as designated and coordinated by SunGard ("Point of Presence"), and the Designated SunGard Facility. SunGard shall provide connectivity between The State location to the Point of Presence, in accordance with Contract Section A.10.

**2.** Internet access services provide The State with access to the Internet from the Designated SunGard Facility ("Internet Access Services"). The Internet is not owned, operated or managed by, or in any way affiliated with, SunGard or any of SunGard's affiliates. The Internet is an international computer network of both Federal and non-Federal inter-operable packet switched data networks. SunGard cannot and does not guarantee that the Internet Access Services will provide Internet access that is sufficient to meet The State's needs. The State agrees that its use of the Internet is solely at its own risk and is subject to all applicable local, state, national and international laws and regulations ("Applicable Laws"). The State represents that it will comply with all Applicable Laws in its use of the Internet Access Services.

**3.** The State hereby acknowledges receipt of SunGard's Network Policies and agrees to comply with such Policies at all times while utilizing the Network Services. The State acknowledges that SunGard may from time-to-time revise its Network Policies, and any revisions will be communicated to The State by posting on the Portal or via email notification. The State also acknowledges that a breach of any of the Network Policies may result in the termination of the Network Services if any such breach is not cured within twenty-four (24) hours of SunGard's written notice of such breach to The State.

**4.** Network addresses assigned from a SunGard IP network block are non-portable.

Network space allocated to The State by SunGard must be returned to SunGard in the event The State discontinues Internet Access Services as defined in this Addendum for any reason, or upon expiration or cancellation of the Contract.

**5. Managed Internet Access Services.** Managed Internet Access Services provide The State with a dedicated IP connection of Committed Bandwidth Tier Level (as defined in the Contract) as selected by The State.

**6. Cross Connect Services.** SunGard shall provide technical support to assist The State with the provisioning and installation of third party telecommunication circuits procured by The State or SunGard. Cross Connect Services include: (i) assistance with provisioning third party circuits procured by The State or SunGard; and (ii) port connections from SunGard's network distribution center to the Equipment situated in the Space.

**7. Dedicated Transport Services.** SunGard shall provision third party telecommunications circuit(s) for The State as set forth in the Contract. Dedicated Transport Services include: (i) provisioning and installation of dedicated SunGard or third party circuit(s); and (ii) port connections from SunGard's network distribution center to the Equipment situated in the Space.

**8. Managed Load Balancing Services.** SunGard shall provide Managed Load Balancing Services for the number of load balancer devices within a single Designated SunGard Facility as set forth in the Contract. Managed Load Balancing Services include: (i) Equipment Management Services (as defined herein); (ii) Standard Monitoring Services (as defined herein); (iii) load balancer policy configuration upon The State request; (iv) resolution of load balancer problems; and (v) Hardware Installation Services (as defined herein).

**9. Geographic Load Balancing Services.** SunGard shall provide Geographic Load Balancing Services for the number of load balancer devices situated across multiple Designated SunGard Facilities as set forth in the Contract. Geographic Load Balancing Services include: (i) Equipment Management (as defined herein); (ii) Standard Monitoring Services (as defined herein); (iii) load balancer policy configuration upon The State request; (iv) resolution of load balancer problems; and (v) Hardware Installation Services as defined herein.

**10. LAN Services.** SunGard shall provide LAN Services for the number of LAN devices within a single Designated SunGard Facility as set forth in the Contract. LAN Services include: (i) Equipment Management Services (as defined herein); (ii) Advanced Monitoring Services - Device (as defined herein); (iii) LAN device configuration upon The State request; (iv) resolution of LAN device problems; and (v) Hardware Installation Services as defined herein.

**11. MetroBandwidth.** SunGard shall provide on-demand access to transport infrastructure. Transport options include: (i) connecting two SunGard service areas within the same building; (ii) connecting two service areas located in separate buildings within the same metropolitan area; or (iii) access to local circuits connecting a point of presence to a SunGard center, as described in the Contract.

## H. PROBLEM RESOLUTION

### 1. Detection, Notification and Diagnosis.

Within fifteen (15) minutes of SunGard's determination that there has been a Service impacting event, SunGard will notify The State of the problem (unless SunGard was first notified by The State).

### I. REMOVAL OF EQUIPMENT OR EXPIRATION/CANCELLATION OF CONTRACT AND TRANSITION SERVICES

1. Upon removal of the Equipment at The State's request or expiration/cancellation of the Contract for any reason other than due to an uncured material breach by The State, and provided The State is not in default of its payment obligations under the Contract, SunGard shall provide The State with reasonable transition services and information and documentation that reasonably may be needed by The State in connection with the orderly and expeditious transition of the Services ("Transition Services"). The Transition Services shall be provided for a period of up to one hundred twenty (120) days, provided The State continues to make timely payments of the Monthly Fees as set forth in the Contract.

2. Upon the removal of the Equipment at The State's request or expiration/cancellation of the Contract for any reason SunGard shall delete all The State software and data residing on SunGard-provided Equipment.

## J. SERVICE LEVEL COMMITMENTS

The following subsections define the criteria for the Services and the compensation in the form of credit(s) for which The State is eligible in the event that the defined criteria was not met for the Service.

### 1. Internet Access Availability

- **Guarantee** – During any calendar month, the Internet protocol network utilized to access the Internet from the Designated SunGard Facility will have availability of 99.99% for The State to transmit to, and receive information from, the Internet.
- **Definition** – "Internet availability" is defined as the ability to route a data packet from The State's environment located within a Cabinet or Suite in the Space, to the egress point to the public Internet.
- **Measurement** – SunGard will measure availability of the SunGard Internet protocol network by computing the total number of successful performance measurements between agents as a percentage of the total number of attempts between agents. "Agents" are defined as passive devices that are located in every SunGard hosting facility. Network error conditions are considered "failed attempts". Measurements will be posted to the Portal.
- **Remedy** – If SunGard fails to provide Internet access in accordance with the Guarantee, then The State is entitled to a credit of one (1) day's Monthly Fee for Recovery Center Connectivity as set forth in Contract Attachment B. If The State exceeds eight (8) or more cumulative full hours of unavailability during a calendar month, The State shall be issued a total credit of one (1) month's Monthly Fee for Recovery Center Connectivity as set forth in Contract Attachment B for the calendar month in which SunGard failed to meet the Internet Access Availability Guarantee.

### 2. Latency

- **Guarantee** – The average round trip latency between any two agents within SunGard's Internet protocol network will not exceed an average of 50 milliseconds in North America during any calendar month.
- **Definition** – Latency is defined as the round trip time it takes for a data packet to

travel between two agents within SunGard's Internet protocol network. "Agents" are defined as passive devices that are located in every SunGard hosting facility. Each Agent is placed on that hosting facility's network infrastructure to take measurements across the SunGard Internet protocol network.

- **Measurement** – SunGard will measure latency by averaging sample measurements taken during the prior calendar month between agents on SunGard's Internet protocol network. SunGard records the packet measurement based on the time in milliseconds that it takes to send a data packet and to receive the acknowledgement of that data packet. Measurements will be posted to the Portal.
- **Remedy** – If SunGard's average monthly latency is greater than the Guarantee above, then The State is entitled to a credit of one (1) day's Monthly Fee for Recovery Center Connectivity as set forth in Contract Attachment B for the calendar month in which SunGard failed to meet the average trip Latency Guarantee.

### 3. Packet Delivery

- **Guarantee** – A monthly average success rate of 99.9% for packet delivery through SunGard's Internet protocol network.
- **Definition** – "Unsuccessful delivery" is defined as packets dropped due to transmission errors or router overload before exiting the SunGard Internet protocol network.
- **Measurement** – SunGard shall measure packet loss by the number of re-transmitted data packet requests. All data packet retransmits are assumed to be due to a lost packet. Daily measurements will be summed and then divided by thirty (30) to calculate a monthly average. Measurements will be posted to the Portal.
- **Remedy** – If SunGard's average successful monthly packet delivery is less than 99.9%, then The State is entitled to a credit of one (1) day's Monthly Fee for Recovery Center Connectivity as set forth in Contract Attachment B for the calendar month in which SunGard failed to meet the monthly Packet Delivery Guarantee.

### 4. Power

- **Guarantee** – 100% power availability in the Designated SunGard Facility.
- **Definition** – Provision of uninterrupted power to the Designated SunGard Facility infrastructure and to the Equipment located within the Designated SunGard Facility based upon the capacity specified in the Contract. Only The State-provided Equipment that supports multiple redundant power feeds or who have integrated a static switch to provide redundancy to a single fed piece of The State-provided Equipment qualify for the Guarantee. The Service Level Commitment is not available if The State's total utilization of an A & B Side pair exceeds 80% of the capacity of one of the circuits in the pair.
- **Measurement** – Power availability is measured as the unscheduled time that the SunGard-provided dual power feeds were simultaneously unavailable.
- **Remedy** – If power is unavailable as a result of SunGard's actions or inactions, such that The State's Services are interrupted, then The State is entitled to a credit of one (1) day's Monthly Fee for the Services for the affected Equipment for each incident. If The State exceeds eight (8) or more cumulative full hours of unavailability during a calendar month, The State shall be issued a total credit of one (1) month's Monthly Fee for the Services for the affected Equipment for the calendar month in which SunGard failed to meet the power availability Guarantee.

### 5. Network Hardware Availability

- **Guarantee** – Network hardware components which are provided by SunGard to facilitate LAN Services, Managed Firewall Services, Managed Intrusion Protection Services, Managed Load Balancing Services, or Geographic Load Balancing Services which are configured in a redundant configuration, wherein all single points of failure have been eliminated, shall be operational and available to The State 99.95% of the time during the Contract Term. Notwithstanding the foregoing, for all network hardware provided by SunGard in which the hardware is configured in a single architecture, SunGard commits that associated network hardware shall be

operational and available to The State 99.5% of the time during the Contract Term.

- **Measurement** – SunGard shall monitor the network hardware and the network devices shall be polled every five (5) minutes via a standard ICMP or SNMP poll.
- **Remedy** – If during any three (3) month period, network hardware availability for any two (2) months falls below the applicable Guarantee percentage as an average for the month, SunGard will credit The State ten percent (10%) of the then current Monthly Fee for Recovery Center Connectivity as set forth in Contract Attachment B, for each of the two months during which the Network Hardware Availability Guarantee was not met.

## **6. Notification**

- **Guarantee** – SunGard shall notify The State, in the manner as set forth herein and in SunGard's Services Guide within fifteen (15) minutes after SunGard has determined that The State's Equipment/Services are unavailable.
- **Remedy** – SunGard shall credit The State one (1) day's Monthly Fee for the Services for the affected Equipment for each incident during the prior calendar month in which SunGard fails to meet the Notification Guarantee. In the event that The State notifies SunGard regarding unavailability of Equipment/Services, this remedy is not operational.

## **7. Security Services Log Retention**

- **Guarantee** – Except in connection with Services provided by a third party, SunGard shall retain security logs, in the manner as set forth herein and in SunGard's Services Guide, for 90 days after the date of their creation, and will make those log files available to The State upon The State's request.
- **Remedy** – SunGard shall credit The State one (1) month's Monthly Fee for the applicable Service for each month during the contract term in which SunGard fails to meet the Security Log Retention Guarantee.

## **8. Security Alert**

- **Guarantee** – SunGard shall notify The State of major security events within 15 minutes of

SunGard's detection and identification of the major event.

- **Remedy** – SunGard shall credit The State one (1) month's Monthly Fee for the applicable Service for each month during the contract term in which SunGard fails to meet the Security Alert Guarantee.

## **9. Remedies General**

If SunGard fails to meet a defined Service Level during the Contract Term, The State shall be entitled to receive the credits as reflected herein by Service Level. Failure to meet the same Service Level three (3) times in any contract year shall entitle The State to terminate the applicable Service upon ninety (90) days prior written notice to SunGard. In no event will the total credits for any occurrence exceed The State's then current Monthly Fee for the applicable Service.

SunGard shall not be responsible for the failure to meet a Service Level if the failure is caused by: (a) the breach of the Contract by The State; (b) the negligence or intentional acts or omissions of The State or its employees or agents; (c) Equipment malfunction (provided said Equipment has been maintained by SunGard in accordance with the terms of the Contract); or (d) the failure of any Software to perform in accordance with its specifications ("Software Failure") and such Software Failure is not caused by SunGard's negligence, willful misconduct or failure to maintain a maintenance contract on such software. Further, any scheduled maintenance (including upgrades, repair or component replacement or scheduled backups) or other mutually agreed-to downtime shall not be included in calculating any Guarantee has been met. In addition, the Guarantees do not include any downtime as a result of: (a) The State-made changes to applications or data; (b) The State retaining ROOT or ADMIN privileges; (c) The State requiring SunGard to maintain, or continue to run unsupported Software or hardware releases; (d) Software or hardware failures resulting from the absence of an update, patch, configuration change, maintenance change or repair recommended by SunGard but rejected or delayed by The State without justification; or (e) The State retaining access control to the network and/or security device(s) for which SunGard is providing the Services.

**10. Software Failure.** The State acknowledges that SunGard is not the developer of any of the Software product(s) used to provide the Services hereunder. In the event of a Software Failure, if in the reasonable discretion of SunGard and The State, such Software Failure cannot be cured and if, at the time of such failure no other functionally equivalent Software compatible with

the Equipment is commercially available, The State shall have the right to immediately remove the Equipment without penalty.

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